In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 965

EDWARD J. MCKENZIE, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

We respectfully invite the attention of the Court to the following facts, which show that the petition for a writ of certiorari was filed out of time.

The Court of Claims dismissed this action on June 17, 1968, and denied petitioner's motion for a rehearing on October 18, 1968 (Pet. App. 1). The petition for a writ of certiorari was filed on Saturday, January 18, 1969, ninety-two days thereafter, and the time for petitioning was not extended. In relevant part, 28 U.S.C. 2101(c) provides that "any writ

of certiorari intended to bring any judgment or decree in a civil action * * * before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Since these limits are jurisdictional, the petition should be denied as untimely.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1969.

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